

judgment more cautiously than the conclusions of the summons are expressed.

Agents for Pursuers—Adam & Sang, S.S.C.

Agents for Defenders—Renton & Gray, S.S.C.

Thursday, January 9.

MUIR, PETITIONER.

*Messenger-at-Arms—Sheriff-officer.* Circumstances in which Court authorised execution of summons by sheriff-officer.

George Walker Muir craved the Court to grant authority to have a summons executed in Mull by a sheriff-officer.

BRAND (for him) stated that there was no messenger-at-arms in Mull, and that, if the summons had to be executed by a messenger-at-arms, it would be necessary to send one from Oban, where there was only one, or from Glasgow or Greenock. Owing to the difficulty of travelling in winter, a fortnight would probably be required for the messenger going to Mull and returning. That would be a great expense, and the delay would be prejudicial.

LORD PRESIDENT—We shall grant authority in this case; but it must not be understood to be a matter of course that all summonses to be executed in Mull are to be executed by a sheriff-officer. The application is rather granted in respect of the season of the year.

Agents for Petitioners—D. Crawford and J. Y. Guthrie, S.S.C.

Friday, January 10.

BIRELL v. BEVERIDGE AND STEEDMAN.

*Jus quæsitum tertio—Sale—Missives of sale—Reserved power of redemption.* Circumstances in which a claim of *jus quæsitum tertio* repelled.

Birrell brought this action of reduction and declarator against Beveridge and Steedman, in the following circumstances:—On 18th May 1865, Beveridge and Steedman entered into missives of sale of a house belonging to Steedman, and occupied partly by Birrell. The missives contained a stipulation that Birrell was to get a seven years' lease of the premises, and "he will have power to redeem the property at the end of the lease at the same price." The missive was not holograph of Steedman. Shortly after, the intention of the purchaser and seller was altered, and instructions were given that the deed of conveyance, when executed, should contain a provision of lease and power of redemption in favour of Steedman, instead of Birrell. The deed was executed on 24th May. In July 1865, Steedman discharged his right of redemption for a money payment. Birrell now sought reduction of the discharge of the right of redemption granted by Steedman to Beveridge, and declarator that he was entitled to enforce the stipulation in his favour contained in the missive of 18th May. In support of this claim he produced missives, bearing to be dated 10th May, by which Steedman sold the property to him. These last missives were holograph of the parties. The defenders contended (1) that the missives of 10th May were not executed of the date they bore, and (2) that the missives of 18th May were improbable.

A proof was taken.

The Lord Ordinary (ORMIDALE) found that Birrell had failed to prove that Beveridge was, on 18th May, aware that the subjects had been previously sold to Birrell; but found it proved that Beveridge, soon after the 18th, and before he and Steedman arranged the alteration on the agreement, knew that a copy of the missives of 18th May had been given to Birrell, and Birrell was thus made aware of the condition therein in his favour; and held, in these circumstances, that, in point of law, the pursuer Birrell had a right conferred on him by the missives of 18th May, which could not be defeated by any arrangement to which Birrell did not give his consent; and therefore sustained the claims of the pursuer in the present action.

The defenders reclaimed.

Lord Advocate (GORDON) and HALL for them.

GIFFORD and SCOTT, for pursuer, in reply.

LORD PRESIDENT, founding his judgment upon the documentary evidence, held that Beveridge was not proved to have had any knowledge of a previous onerous claim on the part of Birrell; and further, that the pursuer had failed to prove the date of the holograph missives of 18th May.

LORD CURRIEHILL differed, and held, on an analysis of the parole proof, that the existence of the missives of 10th May, at that date, or at least before 18th May, was proved. He thought, further, that the objection founded on the improbable character of the missives of 18th May was obviated *rei interventus*; and held that Beveridge was put into such a position that he ought to have sought information from Birrell as to the nature of his reserved right.

LORDS DEAS and ARDMILLAN concurred with the Lord President.

Interlocutor reversed, and defenders assolized.

Agents for Pursuer—D. Crawford and J. Y. Guthrie, S.S.C.

Agents for Defenders—Watt & Marwick, S.S.C.

Friday, January 10.

DOUGLAS' TRUSTEES v. DOUGLAS AND OTHERS.

*Heir and Executor—Heritable and Moveable Debts—Relief—Discharge.* A testator conveyed his whole estate, heritable and moveable, to trustees, who were to pay all his debts, and, after expiry of his widow's liferent, to convey a certain property of A to a party named, and the residue of his estate to his nephews and nieces. The testator left considerable debts, and, in particular, three heritable bonds over the said property of A. The widow, who was one of the trustees, and who mostly managed the trust, paid off and discharged these bonds. In an action of multiplepounding after the death of the widow, the testator's trustees claiming to treat the amount of the bonds as a debt of the testator which had been paid out of his general estate, held (1) that the trustees were neither bound nor entitled to relieve the disponee of A of the amount of the bonds, to the effect of diminishing the amount of residue payable to the residuary legatees. (2) That, in fact, the widow paid off the bonds out of her own funds,